

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of  
Release of Customer Information During 9-1-1 Emergencies

RM-10715

Reply Comments of the  
Electronic Privacy Information Center  
September 15, 2003

The Electronic Privacy Information Center (“EPIC”) commends the members of the wireless telecommunications industry that have submitted comments in response to the National Emergency Number Association (“NENA”), the Association of Public Safety Communications Officials- International, Inc. (“APCO”), and the National Association of State Nine One One Administrators (“NASNA”) Petition for Rulemaking, which requested that the Commission initiate a proceeding on the legal preconditions to the release of customer-specific information. National Emergency Number Petition (filed May 2, 2003) (“Petition”). The commenters’ efforts to address the legal confusion surrounding the release of wireless service customers’ personal information in emergency situations reflects a strong commitment to helping to provide the most effective emergency response service possible while respecting customer privacy.

In these reply comments, EPIC reasserts that a rulemaking is appropriate to clarify how Section 222 of the Communications Act of 1934 (“Communications Act”) and the Electronic Communications Privacy Act (“ECPA”) combine to regulate wireless service providers’ disclosure of customer information in emergency situations. Such

clarification will ensure that both providers and customers are confident that wireless service is provided in accordance with all applicable laws. However, as other commenters have noted, the Federal Communications Commission (“FCC”) lacks the authority to alter the legislation that Congress already has place. Thus, EPIC encourages the FCC to interpret the laws that Congress has passed to reduce industry confusion. The FCC might, for example, define terms that have proved problematic for wireless service providers, such as the term “user” in 47 U.S.C. § 222(d), where Congress has not already provided guidance on the matter. In the absence of a rulemaking, EPIC suggests that the FCC submit the questions raised in Petitioners’ petition for congressional consideration.

An FCC rulemaking is appropriate in this situation to clarify how the Communications Act and the ECPA combine to regulate wireless service providers’ disclosure of customer information in emergency situations. As Sprint notes, the FCC is well within its authority to interpret provisions of the Communications Act, which is the FCC’s authorizing statute, so long as it does not contravene Congress’ clearly expressed intent. Sprint comments at 9. Accordingly, EPIC agrees with the Massachusetts Statewide Emergency Telecommunications Board’s (“MSETB”) suggestion that the FCC interpret the term “user” in 47 U.S.C. § 222 (d)(4) with regard as to whether it includes disclosure of the location information of a caller who is not personally in need of emergency assistance. However, as stated in our earlier comments (incorporated by reference herein), EPIC believes that the provision should be interpreted to require the consent of a caller before his location information is disclosed when that caller is not personally in need of emergency services. Such a requirement will protect the privacy of

consumers who summon emergency assistance on behalf of others, though object to the disclosure of their own location information. *See* EPIC comments at 3.

EPIC believes the FCC will reduce industry confusion by holding a rulemaking to clarify how the provisions of the Communications Act and ECPA govern wireless service providers' disclosure of customer information in emergency situations. However, EPIC urges all interested parties to heed the observations of the Cellular Telecommunications & Internet Association ("CTIA") and Sprint that the FCC lacks authority to change the laws Congress has seen fit to enact. CTIA asserts correctly that the FCC "has no authority to alter Congress' framework for protecting customer information from disclosure," CTIA comments at 2, and Sprint notes that "the [FCC] does not have the legal authority to redraw the lines that Congress has enacted," Sprint comments at 2. EPIC agrees that it is not for the FCC to amend the applicable law, regardless of whether Petitioners believe "it would be unfortunate to limit Section 222(d) disclosure to cases when the caller and the endangered person are one in the same," or "the restriction of the criminal law 9-1-1 disclosure exemption to situations involving 'immediate danger of death or serious injury' . . . seems unwarranted in light of the Justice Department's interpretation of the preexisting statute, 18 U.S.C. § 2703(c), finding 'implied consent' on the part of any caller to 9-1-1 independent of the degree of hazard." Petition at 6.

EPIC does believe that the FCC would be well within its delegated authority to provide guidance on how the relevant provisions of the Communications Act and ECPA work together, and how wireless service providers can serve their customers in emergency situations while protecting customer privacy. Such a rule will make it

possible for wireless service providers to react to 9-1-1 emergency calls without fear that they are failing to comply with the law governing disclosure of customer information.

For the foregoing reasons, EPIC encourages the FCC to hold a rulemaking to clarify how the Communications Act and ECPA work together to regulate wireless service providers' disclosure of customer information in emergency situations. Should the FCC deem it inappropriate to conduct such a rulemaking, however, EPIC suggests that the FCC recommend to Congress that the legal concerns raised in Petitioners' petition would benefit from congressional clarification.

Respectfully submitted,

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